No. 18-281

IN THE SUPREME COURT OF THE UNITED STATES

VIRGINIA HOUSE OF DELEGATES & M. KIRKLAND COX, SPEAKER OF THE VIRGINIA HOUSE OF DELEGATES, APPELLANTS,

v.

GOLDEN BETHUNE-HILL, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

JOINT MOTION OF APPELLEES FOR DIVIDED ARGUMENT AND ENLARGEMENT OF ARGUMENT TIME

Pursuant to Rules 21, 28.3, and 28.4 of the Rules of this Court, appellees Golden Bethune-Hill, Christa Brooks, Chauncey Brown, Atoy Carrington, Alfreda Gordon, Cherrelle Hurt, Tavarris Spinks, Mattie Mae Urquhart, Sheppard Roland Winston, Thomas Calhoun, Wayne Dawkins, Atiba Muse, and Nancy Ross (plaintiff-appellees) and appellees Virginia State Board of Elections, Virginia Department of Elections, James B. Alcorn, Christopher E. Piper, Clara Belle Wheeler, and Singleton B. McAllister (state appellees) respectfully move for divided argument in this case. The plaintiff-appellees request 20 minutes of argument time and the state appellees request 10 minutes of argument time, with counsel for the state appellees presenting first and counsel for plaintiff-appellees presenting second. This division of argument time will ensure that both the plaintiff-appellees and the state

appellees have their interests fully represented, and that the Court receives a full understanding of the perspectives and arguments of all parties.

The United States has also informed counsel that it intends to file a motion for leave to participate in the oral argument as *amicus curiae* in support of neither party and for 10 minutes of argument time. If the United States so moves, appellees request that the Court expand the argument time to 70 minutes and allocate 30 minutes to appellants, 20 minutes to plaintiff-appellees, 10 minutes to the state appellees, and 10 minutes to the United States, with appellants presenting first, the United States presenting second, the state appellees presenting third, and plaintiff-appellees presenting fourth.

The United States takes no position on expansion of the argument time or the division sought by this motion, so long as the United States is allotted 10 minutes of argument time.

Appellants have advised that they consent to appellees' request for divided argument but oppose appellees' request to expand the argument regardless of whether the United States participates. If the Court does expand the argument, however, appellants join appellees' request to split any enlargement of time equally, with appellants receiving the same amount of total argument time as is granted to plaintiff-appellees and state-appellees collectively.

1. This appeal involves a constitutional challenge to 11 districts of the lower house of Virginia's bicameral state legislature. The Court postponed consideration of jurisdiction until the hearing on the merits and specifically directed

the parties to brief whether appellants have standing to appeal.

2. Plaintiff-appellees are voters who allege that the state legislative districts in which they reside are racial gerrymanders in violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. Plaintiff-appellees prevailed in the district court.

3. The state appellees are two Virginia state agencies and four Virginia officials who administer elections. The state appellees were the defendants in the district court and are represented by Virginia's Attorney General. The state appellees have not appealed the district court's judgment against them, and their motion to dismiss argued solely that appellants—the Virginia House of Delegates and its Speaker, who intervened as defendants in the district court proceedings and are represented by private counsel—lack standing to appeal.

4. Plaintiff-appellees and the state appellees have distinct interests and perspectives concerning this case. Plaintiff-appellees seek to ensure that their rights are vindicated and to defend the judgment that they won below. As government officials, the state appellees seek to ensure that the State's ability to speak with one voice before this Court is not fragmented, that public resources are not squandered by appeals that its highest legal officer has concluded are unwarranted, and that an orderly process is in place for Virginia's rapidly approaching 2019 elections. Plaintiff-appellees and the state appellees have been represented by separate counsel throughout this case and continue to be separately represented. They also filed separate briefs in this Court.

5. Plaintiff-appellees and the state appellees have also emphasized different arguments in this Court in opposing appellants' appeal. While plaintiff-appellees have followed this Court's directive to fully brief standing at the merits stage, they also have argued that, if this Court determines it has jurisdiction, it should affirm the district court's judgment on the merits. In contrast, the state appellees have argued solely that the Court lacks jurisdiction because only the Attorney General (who represents the state appellees but not appellants) may initiate an appeal to this Court.

6. This Court has often granted motions for divided argument when both a state government party and a private party appeared on the same side of the case. *See, e.g.*, *American Legion* v. *American Humanist Ass'n*, No. 17-1717, 2019 WL 271957 (Jan. 22, 2019); *Tennessee Wine & Spirits Ass'n* v. *Blair*, 2019 WL 98538 (Jan. 4, 2019) (mem.); *Sturgeon* v. *Frost*, 139 S. Ct. 357 (2018) (mem.); *Janus* v. *American Fed'n of State, Cty., & Mun. Emps., Council 31*, 138 S. Ct. 974 (2018) (mem.); *Masterpiece Cakeshop, Ltd.* v. *Colorado Civil Rights Comm'n*, 138 S. Ct. 466 (2017) (mem.); *Utility Air Regulatory Grp.* v. *EPA*, 135 S. Ct. 1541 (2015) (mem.); *Oneok, Inc.* v. *Learjet, Inc.*, 135 S. Ct. 884 (2014) (mem.). The Court has also granted divided argument and enlarged the time for argument where a state entity, a non-state party, and the United States all supported the same ultimate result. *See, e.g.*, *American Legion*, 2019 WL 271957, at *1 (enlarging argument time to 70 minutes); *Friedrichs* v. *California Teachers Ass'n*, 136 S. Ct. 566 (2015) (mem.) (granting motion for 3-way divided argument and enlarging time to 40 minutes per

side); *Bush* v. *Vera*, 516 U.S. 911 (1995) (same).

7. For the reasons stated above, plaintiff-appellees and the state appellees jointly request that the Court divide oral argument time between them, with counsel for the state appellees presenting first for 10 minutes and counsel for the plaintiff-appellees presenting second for 20 minutes.

8. Additionally, assuming the United States seeks to participate in oral argument, plaintiff-appellees and the state appellees request that the Court enlarge oral argument time by 10 minutes and grant 30 minutes to appellants, 20 minutes to plaintiff-appellees, and 10 minutes each to the state appellees and to the United States, presenting in the order specified above.

Respectfully submitted.

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